

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**JANICE HUGHES BARNES, INDIVIDUALLY §
AND AS A REPRESENTATIVE OF THE §
ESTATE OF ASHTIAN BARNES, DECEASED §
and TOMMY DUANE BARNES §
Plaintiffs §**

VS. §

**ROBERTO FELIX, JR., §
AND THE COUNTY OF HARRIS, TEXAS §
Defendants. §**

C.A. NO.: 4:18-CV-00725

**DEFENDANTS HARRIS COUNTY AND ROBERTO FELIX, JR.'S RESPONSE TO
PLAINTIFFS' MOTION TO LIFT STAY**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Harris County and Roberto Felix, Jr. ("County Defendants") file this response in opposition to Plaintiffs' motion seeking lifting the stay for only pretrial and trial deadlines.

Because the Court has entered an order substantially altering its order granting summary judgment to both defendants, and permitting Plaintiffs to proceed with their remaining excessive force claim, (Felix's drawing his service weapon), the County Defendants oppose the motion as stated, but would ask as the Court lifts the stay, it also grant them leave to file a second motion for summary judgment on that claim and permit the parties to file expert designations on that claim. Felix has a meritorious defense on the issue, and Fifth Circuit authority has held that simply drawing a weapon is not an excessive force constitutional deprivation. *See Gonzales v. Flanagan*, 102 F. App'x 404, (5th Cir. 2004) (officer's brandishing her weapon did not cause any injury to prisoner-plaintiff and did not amount to excessive force) (citing *Hinojosa v. City of*

Terrell, Tex., 834 F.2d 1223, 1229–30 (5th Cir. 1988) (fear alone caused as a result of officer pointing gun at the plaintiff did not rise to the type of injury compensable under § 1983)

WHEREFORE PREMISES CONSIDERED, Defendants HARRIS COUNTY and ROBERTO FELIX, JR., respectfully request that the Court lift the stay and extend the dispositive motion, expert designation, and pretrial deadlines, accordingly.

Respectfully submitted,

OF COUNSEL:

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CERTIFICATE OF SERVICE

I certify that the above and foregoing Response was electronically filed with the Clerk of the court using the CM/ECF system will send notification for those listed of record.

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